IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Misc. No. 62858-M of 2005

Date of Decision: August 17, 2007

P.D.Lakhani and another

...Petitioners

VERSUS

State of Punjab and others

...Respondents

CORAM: HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.R.K.Jain, Advocate,
for the Petitioners.

Mr.M.C.Berry, Sr.DAG, Punjab.

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RANJIT SINGH J.

Petitioners from 'Lakhani Rubber Udyog Limited', Faridabad, have filed this petition for quashing of Calendra vide Rapat No.23 dated 11.5.2005 (Annexure P-2), filed under Section 182 Cr.PC, Police Station Adampur, District Jalandhar.

The facts in brief are that a complaint was filed by M/s Lakhani RubberUdyog Limited, Faridabad in regard to use of its trade mark by some unscrupulous manufacturers, adopting the name 'Lakhani' illegally and for selling their inferior goods with the label of 'Lakhani'. On January 18, 2005, petitioner No.2 had filed the complaint to S.H.O., Police Station Jalandhar, alleging that some unscrupulous manufacturers, shop keepers and traders in Jalandhar by using false trade mark 'Lakhani' on the inferior quality of goods were selling the same at various places in Faridabad etc. It is also claimed that trade mark 'Lakhani' in respect of rubber hawai chappel is registered since 1973 under the provisions of Trade and Merchandise Mark Act, 1958 . When this complaint was filed before the S.H.O., he directed petitioner No.2 to approach S.S.P. Jalandhar, which was done and accordingly, S.S.P. Jalandhar directed S.P. (D) to inquire into the complaint and report within seven days. S.P. (D), in turn, handed over this complaint to Inspector Gian Singh for investigation, endorsing such directions on the face of the complaint. Inspector Gian Singh along with five and six police officials and petitioner No.2 had then gone to the premises of respondent No.2 for the purpose of investigation. Before anything could be done, Dilbag Singh, Director of respondent No.2 concern called labour and other anti social elements, 200 in number, and thus did not allow the police to conduct any search of the premises. It is alleged that respondent No.2 had forcibly obtained a writing from the employees of M/s Lakhani Rubber Udyog Limited that no hawai chappel with the trade mark of Lakhani was found in the premises of respondent

No.2. No raid, accordingly, was conducted. On the same day Inspector Gian Singh recorded a Rapat Roznamcha No.9 in the CIA staff about what all happened in the premises of respondent No.2. Subsequently, the employees of M/s Lakhani Rubber Udyog Limited were called by S.S.P. and S.P. (D) on more than one occasion and they had given their statements about what all had happened at the time of raid. The police, however, neither registered any FIR nor any case was registered about the incident that took place at the premises of respondent No.2. Suddenly, however, the petitioner learnt that the police, instead of registering FIR against respondent No.2, had recorded a complaint Rapat No.23 dated 11.5.2005 against the petitioner through Sukhpal Singh SHO for an offence under Section 182 IPC claiming that false report was lodged by the petitioners. It is alleged that no false report was ever lodged by the petitioners and the false Calendra is prepared in order to harass and humiliate the petitioners. Accordingly, the present petition, seeking quashing of the said Calendra, is filed.

Notice in this case was issued and proceedings before the trial Court were subsequently stayed on May 10, 2006. Reply is filed on behalf of the State and respondent No.2. The counsel for the parties have been heard.

Mr. R.K.Jain, counsel appearing for the petitioners has raised a solitary ground to challenge the Calendra to say that the same is not filed by a competent officer, as is provided under the provisions of Section 195 Cr.PC. As per the counsel, the

proceedings were initiated by the S.S.P. Jalandhar and as such, no Court could have taken cognizance of the offence punishable under Sections 172 IPC and 188 IPC (both inclusive) except on the complaint in writing of the S.S.P.Jalandhar or of some other public servant to whom he is administratively subordinate. This according to the counsel is as per the provisions of Section 195 Cr.PC.

Counsel for the petitioners, in my view, has not been able to make good his submissions on the basis of facts pleaded and revealed from the record. The complaint (Annexure P-1), which has led to filing of this Calendra, is addressed to Station House Officer, Jalandhar, obviously, as such, this information was given to S.H.O. which is said to be false to attract Section 182 IPC. It is not addressed to S.S.P. or S.P.(D). Merely because this complaint was taken to S.S.P. or S.P.(D) and that this was subsequently inquired into as per the instructions/directions issued by the said officers, would not mean that the said complaint was given to S.S.P. or S.P. (D). In fact, complaint (Annexure P-1) is not found addressed to S.S.P. or S.P.(D) at all and thus it cannot be construed to mean that it was given to S.S.P. or S.P.(D) Jalandhar. During the course of arguments, learned counsel for the petitioners showed me the photocopy of the original complaint containing some endorsements for S.P.(D) to inquire into and report and further endorsement by S.P. (D) asking Inspector Gian Singh to investigate etc. These facts, in my view , would not mean that the information was given to S.S.P. or S.P.(D). The information in the form of the complaint was addressed

to Station House Officer, Jalandhar and was made for him to investigate. It is not possible to say that this complaint is not given to Station House Officer or was addressed to S.S.P. or S.P.(D), Jalandhar. The endorsements, pointed out by the counsel on the photocopy of the complaint, are not contained on the copy thereof annexed with the petition. The respondents were not in a position to effectively respond to this specific plea raised during the course of arguments. The case of **Malkiat Singh vs. State of Haryana, (P&H) 1999 (2) RCR (Criminal) 10,** relied upon by counsel for the petitioners would not help his cause as in this case the complaint was sent to Superintendent of Police and thereafter S.H.O., on investigation, found the allegation to be false and had lodged proceedings under Section 182 Cr.PC before the Magistrate. In these circumstances, it was held by the Court that S.H.O. was not competent to make the complaint and this could be made by Superintendent of Police. No other point is urged. In my view, there is no merit in the plea raised by counsel for the petitioner and the petition is accordingly dismissed.

(RANJIT SINGH)
JUDGE

August 17, 2007
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